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# The German, Austrian, and Hungarian Patent Offices

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Corps of the United States Patent Office

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These reports on the facilities and methods of doing business in the German, Austrian, and Hungarian patent offices are the results of our investigations during a visit to these offices in the summer of 1914.

No attempt has been made to make these reports exhaustive. In order to do so, it would be necessary to spend far more time than we had at our disposal and also to repeat much that has already been published. These are therefore only observations which we believed might be of special interest to those familiar with our own practice.

Further information regarding the German patent office can be found in the report of the Investigation of the U. S. Patent Office made by the President's Commission on Economy and Efficiency, 1912.

Of the three offices, the German holds out the greatest interest and our report on this office is the most exhaustive.

In all of the offices visited, we found the officials extremely cordial and attentive, and we wish to express our thanks here for the many courtesies shown us.



### THE GERMAN PATENT OFFICE.

The first German patent law was passed in 1877, nearly a century after the passage of our first law. At that time we had already granted nearly 200,000 patents, we were receiving about 20,000 applications a year, and the examining corps consisted of eighty-eight examiners.

The law of 1877 was amended in 1891, and now a further amendment of the law is before the Reichstag which, if passed, will become effective in 1916. The German system is a combination of our system of examination and the English system of opposition.

Some of the distinguishing features of their law over our own are as follows:

The patent is granted to the first applicant and it is immaterial whether the applicant is the first and original inventor or whether it is an individual, firm, partnership, or corporation.

The question of validity of a patent is decided by the patent office. In an infringement suit, the court has no power to declare the patent invalid.

After five years from the date of the publication of the grant of the patent, the validity of the same, as lacking in novelty, can not be attacked.

Articles of food and medicine are not patentable.

Materials produced by chemical processes are not patentable, but the processes therefor are patentable.

The duration of the patent depends on the payment of an annual increasing tax.

The full term of a patent is fifteen years from the date of application.

All papers that are received in the office are stamped with a consecutive number in the upper right-hand corner together with the date. Inasmuch as the date of filing is of great importance, great care is taken to stamp the papers strictly in the order of their receipt.

The German alphabetical index of applications under the name of the inventor is substantially the same as we keep in our application division. Their method of assigning new applications to the examining divisions is also practically the same as with us. They apparently do not have the same extensive conflict of opinion as to where an application should be assigned for examination



as in our office. When such a case arises, it is submitted to the president for decision, but such cases are comparatively rare. The man in charge of assigning new applications, when questioned as to the sufficiency of their classification for the purposes of exact assignment of applications, stated that it was hardly satisfactory. He stated that they would like to avail themselves of the American classification, but did not seem to be able to make it fit into their scheme, in all cases.

The file wrapper has a pocket on the inside for the receipt of the drawing and also for a sheet on which is endorsed various informal matters by the examiners as the case is passed around among them for various purposes. The drawing is smaller than ours, to wit: 21 by 33 cm. in size, within the border lines, and the only signature thereon is that of the applicant. The serial number and classification are endorsed on the back of the drawing. All papers are permanently sewed into the file wrapper. A tab on the bottom of the wrapper carries the application number so as to facilitate the finding of the file. The first sheet contains various data such as are found on the face of our own file wrappers. The usual papers then follow. In every file there is a copy of the drawing on tracing cloth. There are two copies of the specification and claims in the file, one being for the use of the public when the case is laid open for opposition and which is subsequently forwarded to the printer. The contents of the file are kept intact by placing a cloth strap provided with a buckle around the same. The important papers in a file such as a rejection, appeal or an allowance, are each indicated by projecting borders of different distinctive colors such as brown, red, green, etc., so that any desired one of them may be found without delay and the approximate status of the case may be determined by mere superficial inspection. The serial designation consists of the initial letter of the surname of the applicant and a serial number thereafter, there being a separate series of numbers for each letter of the alphabet. The clerical work of handling office letters is different from our method. Only one copy of the official letter is written. All are then sent to the mail room. A press copy is made on a special machine for that purpose.



The original is then sent to the applicant and the press copy put in the file. They do not consider necessary the third or press copy, which we make. Letters for any one firm are collected and mailed in one envelope. Clerks have a definite task to perform each day and are supposed to stay until they have finished it. There are no female employees in the office.

The routine of examining applications is not substantially different from our own. Every examiner has in his own room the patents relating to his special art, both domestic and foreign. They do not have the stiff mounted copies that we have. All copies of patents for search purposes, foreign and domestic (the examiner's and the public's) are used in the original flexible condition in which they are received by the office. They do not consider seriously the idea that they will wear out too soon. They accordingly avoid the inconvenience and expenditure of a large amount of money involved in the mounting of soft copies of patents for search purposes as in our practice. The examiner keeps his copies in a paper portfolio.

An important feature of the action of the examiner is that he sets a time in which the applicant must reply. This time, which is entirely within his discretion, usually runs from three weeks to two months. There is no fixed limit of time in which the applicant may respond, as in our law. This has the result of expediting business. The office also expedites its end of the business by acting on all cases, if possible, within eight days to a month after the receipt thereof.

From the action of the examining division rejecting an application or from its action in an opposition proceeding there is only one appeal.

We attended a session of one of the German boards of appeals. It was presided over by a director and consisted of three to five members. When the board consists of five, two of them are legal and three are technical members. In the sitting at which we were present, all of the men were of mature years. There are a number of these boards of appeals which may be in session at the same time. The membership of any one board is drawn from forty odd members and is not of fixed personages,



those sitting on any special case being selected on account of their special familiarity with the art to which the case relates. A noticeable feature throughout the organization of the office is that those who decide questions of a technical nature must be specially skilled in that particular art. They were entirely unable to understand how our board of appeals, consisting of only three members, could have such an extensive knowledge of the arts or be physically able to decide the technical and legal questions of the numerous arts that might come before them. The idea of having appeal boards comprising members drawn from the office at large, and not of fixed personages and those best skilled in the particular art seems to be a good one.

The first matters brought before the board were ones of minor importance, and accordingly only three members sat. The following were some of the matters decided:

1. In an opposition proceeding relating to a wireless telegraph the question of the operativeness of the device was raised by the opposer. The applicant was willing to prove the operativeness of the same by exhibiting it to the office, but objected to the presence of the opposer on the ground that there were other matters, in connection with the same, which he desired to keep secret. The board ruled that the opposer had a right to be present at the exhibition before the office, and that if there were other matters which the applicant did not wish to show in connection with the same, then he should cover them up or build a separate device without these features.

2. A paper which should have been filed within a certain time was not so filed on account of intervening holidays. They readily gave permission to file the paper. Our impression was that they are lenient in the enforcement of time limits.

3. Access to certain matters relating to the extent of an applicant's business, disclosed in some official papers that would ordinarily be accessible to the public were denied to the petitioner who wished a complete transcript of the record, and who was a competitor in the business.

These questions were briefly presented by legal members of the examining corps and decided after a compara-



tively brief discussion. In none of these cases were parties represented by counsel. In this manner the board expeditiously disposed of over a dozen cases of the above type in less than half an hour.

We next listened to a very important opposition proceeding. The parties were represented by an imposing array of counsel and technical experts, at least twenty being present. The question involved was principally one of patentability. It related to a process for producing a non-splitting electric insulator, in which the identity of the fibres is obliterated by coating sheets of fibrous material, for example, paper, with a coating and impregnating substance, comprising phenol and formaldehyde and winding it under pressure into a solid roll. The importance of this material in the electrical art can be judged by the fact that it is a competitive article of our well known and famous Bakelite. Briefly, the insulator consisted of some fibrous material, such as paper, which was soaked with Bakelite composition. This impregnated material was then wound under heat and pressure into a roll. The resulting article very much resembled *lignum vitae* wood. It has the property of being an especially good non-conductor for high tension currents and is also weather proof. The art showed it was old to use Bakelite as a non-conductor; that it was old to use fibrous material saturated with resin and rolled up as in this case for a non-conductor (*pertifax* process); that it was old to saturate a fibrous material with Bakelite and form the same into blocks by pressing a number of sheets together and to be used for a non-conductor. The discussion took a wide range and at times was quite warm. We were very favorably impressed by the character of the arguments, the power of analysis, and the logical development of the subject by the different parties. The subject was presented and handled in a manner that would do credit to the best of our own attorneys. It was urged and admitted that this article filled a long-felt want in the trade and that it had replaced nearly all the other insulators for this purpose. Statistics were given showing the phenomenal advance in sales. In orally stating how the article was made, applicant's attorney went into much more detail than the



written specification and included a step not originally disclosed; viz, the application of heat. Opposing counsel objected on the ground that this step was not originally disclosed. It was answered that this step should nevertheless be read into the specification, because it would be obvious to any one skilled in the art, and in making similar products this step had always been found necessary. Applicant further urged in favor of his device that by winding the impregnated material under tension between heated pressure rolls the solvent material was eliminated much more effectually than was the case with an overlying pack of flat sheets of fibrous material, with the coating material interposed between the sheets, and subsequently subjected to heat and pressure, for the reason that the escape of the solvent was to a certain extent prevented in the latter case, and thus the insulating qualities were diminished to such an extent that the material could not be used for high tension insulators. The answer to this was that the natural result of using this old winding process with this old composition was the evaporation of the solvent formaldehyde, and the advantage gained was only due to the substitution of the new composition for resin in the old winding process. The applicant answered by stating that he used as little of the coating composition as possible and that he found the insulating qualities were better with the least amount of coating composition which would sufficiently transform and preserve against moisture the fibrous material, whereas in the prior art the insulating qualities were attributed to the coating material. While admitting that it possessed novelty, the opposers asserted that this process was a natural development of the art, and that the Bakelite people, in seeking uses for their product, would ultimately have attained the same result and the patent office should be liberal in allowing the Bakelite people sufficient time in which to develop the uses of their invention.

We have gone into the recital of this case in considerable detail, particularly to show how far advanced the Germans are in their manner of thought on such questions.

The director conducted the hearing with great ability,



permitting the parties and their experts to be fully heard, but nevertheless avoiding needless talk and arguments, and holding the discussion within well-defined bounds. The hearing lasted about two hours. Counsel then handed a written copy of their arguments to the director and then all withdrew from the chamber. The board now had a free discussion among themselves in which the technical members, by diagrams and examination of the various specimens, elucidated their respective positions. This lasted about fifteen minutes. Thereupon the board was ready to announce its decision. Counsel for the parties were then called in and the decision was orally announced, affirming the opposition and denying the patent. The expeditious manner in which this very important case was handled by the board, without having to read a mass of briefs or to write a lengthy decision, was in strong contrast to our methods, especially as this was the tribunal of last resort, the decision of the Patent Office being final.

In Germany the courts are never called upon to decide questions of granting or refusing a patent. The board of appeals is provided by law with all the means necessary to reach a decision, make investigations, hear witnesses, experts, etc., and its decision is final.

If the decision is favorable to the applicant, the specification is printed and the letters patent are sealed and a brief of the patent is published in the Imperial Gazette, Patentblatt, and is registered in the Patent Roll.

Of all patent applications filed in Germany about 9 per cent are passed to the board of appeals, and of this small percentage only in 22 per cent of the cases, or in less than 2 per cent of the total number of applications, is the decision of the primary examiner's division reversed.

Much thought has been given at various times in our office as to the advisability of briefing our patents as in England and publishing the same in the official gazette, instead of the first five claims, as at present. The German office has gradually drifted away from the laborious work of briefing. Whereas they formerly briefed every patent and published the same with a figure of the drawing in their gazette, they now publish the claims instead of the brief. Of course, on account of the character and



limited number of claims in their patents, a better conception of the invention can always be formed than by our system, where only the first five claims are printed.

In another respect they have also given up briefing. The *Deutsches Repertorium*, which is a digest of all published scientific literature, was carried on by them from the beginning of their office until a few years ago. It was then taken over by a private concern and published as *Fortschritte der Technik*. This concern found that the project was not as profitable as they had anticipated and for several years was given substantial financial assistance by the Patent Office. Lately the company has gone bankrupt and the publication has been suspended. Overtures made to the office to again take up the work have not been at all successful, as the German officials evidently believe there is more work to it than they care to undertake. A form of briefing which they still perform, though it is not very extensive but very useful, is published in one of their gazettes. A brief and suggestive title of the subject-matter of each patent is formulated by the examiner. These titles are then grouped together under the leading word and published annually. Thus anybody interested in any special subject can get approximately all the patents relating to that subject issued during the year to which the report relates by merely looking under the leading word of the group.

The attorneys' or public search hall is about the same size as our own. It is used chiefly for clerical work, considerable being necessary in connection with the publication for opposition. On account of the small filing fee of \$5, there is little or no preliminary examination work done by attorneys in Germany. The search hall is conveniently located near the main entrance. The public copy of patents is kept in a flexible binder. The soft copies of patents are permanently sewed into the binder. On the outside cover is a label showing the class and subclass to which the patents therein belong. On the first page is the "number list" of the patents that should be in that subclass and binder, a very desirable feature which we do not have. The bundles are filed in pigeon holes as with us. There is a hinged closure for each pigeon



hole. On the outside of the closure is the class and subclass number.

The scientific library is very much superior to our own. The Reichstag amply provides for the same by an annual appropriation of \$25,000. It is in charge of a skilled librarian and from the character of the topics which we discussed with him, he impressed us as being a man of considerable value to the office, especially in the line of making readily available to the examiners, information they might not otherwise readily secure. He complained to us of the fact that he had been unable to secure from our office, the number lists of patents in all the classes and subclasses. He did not appreciate that the composition of the classes and subclasses in our office was continually changing so rapidly that the publication of a printed "number list" similar to their own would soon become out of date. He also called attention to the fact that certain publications of our office could not be secured gratis, as is the universal rule in England. All foreign patents, our own included, are now bound in the German office in serial order in small volumes of fifty patents each, thus materially reducing the size and labor of handling the volumes. The facilities and equipment of the library are all that could be desired. The space is ample for years to come. Everything is scrupulously clean and in good order. The book stacks are not open to the public. The collection of modern scientific books is very complete and is classified according to the modern library classification system. The collection of scientific journals and periodicals is very extensive and is easily available to the examiners and public. Two copies of each important periodical are ordered, one being provided for the special use of the examiners, who are interested in that art.

We made particular inquiries along the line of those features of the German law that were essentially different from our own.

On the question of opposition proceedings there seems to be a consensus of opinion in favor thereof. Opposition is deemed to be especially valuable as a means of bringing to the attention of the examiner evidences of public use that would otherwise be unavailable to him, or of literature.



The law provides that the patent shall go to the first applicant and this applicant does not have to be an original inventor. Various people whom we interviewed, informed us that they are not satisfied with this provision. The proposed new law corrects this in part by giving further recognition to the rights of the inventor. Their reason for not giving such recognition to the inventor hitherto is in conformity with the whole spirit of their present law, which aims to consider the industries first and the inventor afterwards. For this reason the validity of a patent can not be attacked after five years from the date of the publication of the grant on the ground of lack of novelty. This provision was passed for the purpose of placing industries in a secure position, and relieving them of the uncertainty that must always exist with respect to a patent whose validity can at any time be attacked. Many patentees therefore never start a suit on their patent until after the termination of the said five-years period.

The courts have no power to declare a patent invalid in an infringement suit, there being a special proceeding instituted in the patent office for that purpose. When an infringement suit is brought, and a close reference is found, the court recognizes it by interpreting the scope of the patent in view of the reference. When, however, a "dead" reference is found and the patent can not be differentiated therefrom, the court then resorts to a legal fiction, as there is no room for interpretation, and says that no such reference could have existed at the time the patent was granted, and so holds the patent absolutely valid.

In view of the fact that the patent office is the only place where the validity of a patent can be attacked, and that annulment proceedings must take place therein within five years from the date of the patent and in view of the attitude of the courts in their disposition to interpret and hold the patent valid, it is hard to find any fair basis of comparison which would tend to show whether Germany grants a greater or less number of invalid patents than we do. A prominent Berlin attorney told me that he believed that we had granted fewer invalid patents than Germany.



The German system of classification differing from our own, the German examiners of course find references when we are unable to do so, but the same system will also cause them to miss references when we will find them.

Another instance of the doctrine of security to the industries first is found in the principle known as "*Gewerbmässige Gepflogenheit*," or the obvious development of the art. While we grant patents for every slight advance in the art, thinking that it encourages and is for the benefit of industry, they refuse to grant them on the ground that it hampers industry. When a patent for a fundamental invention has been granted, they refuse to grant a patent for every slight improvement, under this doctrine, on the ground that if industry is given sufficient time, it will naturally arrive at that point.

The great difficulty of securing patents in Germany has given a great stimulus to the filing of *Gebrauchsmuster* applications, to the extent that over 600,000 applications have been filed since the inauguration of the law in 1891. The fee is small, 15 marks, with a protection for three years, there is no examination as to novelty, and many people who do not care to spend the money for a patent secure protection on a *Gebrauchsmuster* (utility model).

The law also provides for annual increasing taxes during the life of the patent. Failure to pay the annual tax causes the patent to lapse. It was stated to us by a prominent attorney that it was not unusual for corporations to starve out a poor inventor by refusing to buy the invention in the hope that he would thereby fail to pay the tax and they might then come into possession of the same by the termination of the monopoly.

At different times figures have been quoted showing that the German office rejects a much larger percentage of applications than our own office, the conclusion thereby being drawn that the German examiners either make a better search or else are much stricter in their ideas of patentability. In view of the very low filing fee of 20 marks it is cheaper to file an application than to make a preliminary examination. Many prospective applications that are eliminated in our country by the preliminary examination by attorneys are filed in Ger-



many. It would seem that this is a very material factor when a comparison is drawn between the two offices on the proportion of rejected applications.

On the question of designs, there seems to be a quite uniform opinion that our law is a farce so far as the examination system is applied to it. The German officials point out, for instance, that in Switzerland 500,000 lace designs have been filed in one year: of what value would an examination made by us in such a line amount to, they ask. They also point out that the filing fees are too high. In Germany 50 designs can be protected for one year for one mark. There are 200,000 designs filed in Germany each year. The reason for this low filing fee is that out of the immense amount of material filed, it is only occasionally that a successful design develops.

In the trade-mark division they have a name index for search purposes which seems quite ingenious. The word Romola will be indexed under the vowels, o, o, and a; so that, in searching a word which is spelled differently, but has the same phonetic qualities as Pomola or Monola, reference to the same can easily be found.

Every movable piece of equipment has an inventory number stamped or printed thereon.

Records of assignments are kept only under the patent number in books of folio size. There are ten numbers on each page and all transfers are indicated thereunder.

Examiners never resign from the office for the purpose of practicing before the same, as such a practice is held to be ethically bad. The office closes during the summer for six weeks. Office hours are continuous from 9 to 3 o'clock. In order to determine the efficiency of examiners they have established a system which is worthy of consideration. Briefly the system consists in giving a weight to the group of subclasses assigned to an examiner marked on a basis of 1.0, and in accordance with the difficulty of that group. From the total number of actions of an examiner during the month are subtracted those which do not represent any work, but which are merely formal actions. The remaining number is multiplied by the said weight, thereby giving a more equitable basis of comparison between examiners than the number of cases acted upon.



The office is not doing anything toward revising its present classification; in fact, it might be said that they are reasonably well satisfied with the same as it now stands. Applications are assigned and patents are classified in accordance with the particular ulterior use for which an inventor may have designed the invention and set it forth in his specification. Accordingly, if any invention was stated to be of especial use in connection with an automobile, it would be classified in the class where automobiles are found, but if the invention was stated to be of use in a railway car or automobile, then it would be classified in the class where railway cars are found because that is the parent class. After examination by the expert on railways it is then turned over to the expert on automobiles for further examination. We asked the question, if an inventor should not care to limit the use of his invention to any particular industrial art, but alleged for it a most general utility, how they would then classify the same. The Examiners stated that they would require him to specify for what particular use he had designed the same, and on that statement, the case would be classified. Thus if an inventor made an improvement in saws which he believed to be of general application, he would be required to state whether it was to be particularly used for meat, wood, stone, metal or for surgical purposes, there being separate classes for each type, and on his statement the case would be classified. It is very easy to classify inventions in this manner in accordance with the mental reservation of the inventor, but it is not so easy to find them later when a different and a heretofore unsuspected ulterior use is assigned to the same old device. We can not but feel that the German system of classification would be inadequate for our purposes.

The patent office is quartered in a modern fire-proof building which was finished seven years ago. The sanitation and lighting are all that could be desired. There is no thought of overcrowding and there seems to be ample space for years to come. The equipment is substantial and ample but nowhere lavish. Most of the examiners have a room to themselves. The president of the office has living quarters in the building.



Taking the German office as a whole, it is well up to date and can certainly be considered as being in our own class. Different social conditions have caused what seems to us peculiar limitations in their law, but it is noticeable that they are gradually drifting in our direction. The personnel of the German office is quite different from our own force. In the relationship of individuals there is a distinct smack of militarism, preciseness and subordination to superior officers. No one ever thinks of entering the room of an examiner without first knocking and upon entrance there is much formal bowing and handshaking, and the same procedure takes place on exit.

We were treated with great cordiality and frankness by all the officers of the bureau. They called attention to the fact that our own country was about the only one that had not made an investigation of their office in recent years. A representative of the Swedish patent office had some time before spent five weeks there investigating their methods and facilities. We felt that the short time we spent in the German patent office did not enable us to get much more than a bird's-eye view.

### THE AUSTRIAN PATENT OFFICE.

The Austrian patent law, modeled after that of Germany, is about 15 years old. Prior thereto the government granted privileges or monopolies, some public and some secret. These were never printed but copies of the same are in the examiners' files. The law contains a provision that no patent shall be granted for that which was formerly covered by a privilege. It is seldom that a reference is found among them.

The personnel and procedure is substantially the same as in the German office. The office consists of 10 examining divisions having each 10 or 12 men. The board of appeals consists of five members and does not comprise fixed personages. The office is divided into two groups of five divisions each. When appeal is taken from the decision of a division in Group A, the members of the board of appeals are drawn from Group B. When there are two divisions relating to the same general art, as



where there are two chemical divisions, one division is placed in each group. There are no directors to assist the Commissioner here as in the German office.

The method of keeping the references for search purposes is the same as in the German office, except that they do not have a similar loose copy for public search purposes. All public searching is done in the library through the bound volumes of subclasses, and there is but little of it done apparently.

The Austrian official classification is much the same as is the German, but not so finely subdivided. Nearly every examiner, however, has worked out a private and very detailed classification for his own purposes. Suits for infringement are brought in a court, the members of which are composed of regularly appointed jurists, and having in addition thereto technically trained persons. The latter are usually college professors, doctors of engineering and other strictly professional men, but they are never men from the industries. In Austria a patent can be declared invalid at any time, whereas in Germany it can not be declared invalid after five years from the date of publication of the grant. Austria has the same provision of law as Germany to the effect that when a number of employees contribute ideas to an invention, the latter shall nevertheless belong to the employer. Just why they are unable to accept the doctrine of joint invention in the above case is hard to see.

The office is six months behind in its work and there is much complaint on that account. Inasmuch as the law provides that a patent shall not be granted if the same has been published or patented at the time of application, they do not act on any application until three months after the filing date, such time being allowed for the receipt of foreign patents and publications prior to that date.

Their method of keeping assignment records was the best we have found. In bound volumes, folio size, a whole page is reserved for each patent. On this page are recorded all transfers of the patent. In addition thereto there is an alphabetical card index of all assignees. Each card shows the number of the patent involved. There were over 100 cards under the head of United Shoe Machinery Company alone.



The working clause is in effect in Austria, but is seldom invoked and usually only against very important patents. We were informed that the Mergenthaler patent was revoked for non-working. The question of reciprocal rights with our country on that question does not concern them greatly because there are few Austrian applicants for U. S. patents, compared with American applicants for Austrian patents. Fixing the price at which a patented article shall be sold is not forbidden. The only price-fixing that is prohibited by law is where there is an agreement to raise the price.

There is now before the Austrian parliament a new law covering designs, whether they are artistic, as with us, or utilitarian, as with the German Gebrauchsmuster. The law does not attempt to distinguish between the two and protection is to be had wholly by registration, as in Germany.

The facilities and equipment of the office are wretched. The office is scattered through six rented buildings all of which are poorly lighted and in an unsanitary condition. The office furniture is also meagre and poor.

The library is quite extensive, but is also poorly housed. They do not have the modern library classification, although the one they have is quite efficient. All foreign patents are bound in volumes of 100 each.

The personnel impressed us as being of a high order. We surmise that their handling of a case would be as intelligent and thorough as that of the German or our own office. There is, however, a great difference in the general atmosphere of the office. The military preciseness and bearing of officials so conspicuous in the German office is nowhere apparent here. They have the same free and easy manners as one finds in our own office.

### THE HUNGARIAN PATENT OFFICE.

The Hungarian Patent Office, at Budapest, is fairly comfortably housed in a substantial stone building of four stories and basement, the approaches to the various rooms leading from galleries surrounding a central court.

Under the Hungarian law of July 7, 1895, now in force, any new invention capable of being utilized industrially



can be patented. A patent will not be granted, however, for an invention:

1. The working of which is contrary to law, an ordinance or to public morals.

2. Which relates to arms for war purposes, explosives, ammunition, fortifications or ships of war necessary for increasing the belligerent power of the army or navy, provided the Minister of Commerce enters an opposition against the granting of such patent within two months of the proposed date of publication.

(Note: Paragraph 2 will probably be eliminated in the proposed new law, for its effect is to prevent the granting of valuable patents.)

3. For scientific theorems or more principles.

4. For articles serving for human and animal nourishment, for medicines and articles produced by chemical processes, although the process itself employed in making such articles may be patented.

An invention is not regarded as new if at the time of filing the application:

1. It has been made so known by printed publications or other reproductions, that it can be used by persons skilled in the art.

2. It has been made so known by public working or by exhibition that its employment by persons skilled in the art has been rendered possible, excepting that an exhibitor at an official exhibition is given an allowance of six months if he states that he intends to file an application for a patent on the article exhibited.

3. It has formed the subject-matter of a prior patent.

The invention is regarded as novel, notwithstanding prior publication or working, if a term of 100 years has elapsed between the time of its last publication or working and the date of application.

Whether an official publication published in a foreign State deprives the patent of novelty is determined by treaties made with such State.

Applications, as soon as they are received, are given a time seal, indicating the exact moment of their receipt ,



and also a serial number. Every application must contain:

1. The name, profession, and residence of the applicant and, if he resides abroad, also the name and residence of his representative residing in Hungary.

2. The title of the invention sought to be patented by its general designation:

3. The declaration that the applicant is the inventor of the matter sought to be patented, or that he is the successor (*ayant cause*) of the inventor, and, in the latter case, the application must contain the name, profession, and residence of the inventor, and also designate the document by which the applicant supports his rights as applicant.

The application must be accompanied by a receipt of the Public Treasury indicating that the application fee, 20 crowns, or \$4, has been paid, and a duly authorized power of attorney, if the application is filed by a representative of the applicant.

The description of the invention must be in duplicate and be placed in a sealed envelope on which the title of the invention and the name and residence of the applicant are noted. If the applicant be the successor of the inventor, the document determining the succession, assignment or transfer must accompany the application.

Drawings must be in duplicate, the main drawing on white and smooth design paper, and the copy on tracing cloth, and at least the former be executed in black India ink.

The specification or description must comply with the following requisites:

1. It must enable persons skilled in the art to make the invention on the basis of such description without any amplification thereof; in particular, the description must not contain any misleading statements or ambiguities nor must it keep secret anything relating to the means, mode of working or the particular operations necessary for successfully carrying the invention into practice, nor must it name means or devices which are more expensive or have not the same effect.

2. It must enumerate, in one or more claiming



clauses, what is considered as new and what the applicant wishes to have protected by patent. If there be two or more claiming clauses and the substance of the invention does not consist in the matters separately pointed out in the several claiming clauses but in the entirety of the matters pointed out in all of the claims or in groups of such claims, this circumstance must be particularly stated. Defects of the claims can not be remedied by other parts of the specification.

3. It must be accompanied by such drawings as are necessary for its comprehension and, if required, by models or samples.

4. It must bear the signature of the applicant or his representative.

Up to the time of publishing the application, applicant may make alterations or amendments of the description and claims. The effect of such changes upon the priority of the application, however, is determined by the office.

The examining staff comprises sixteen "Patent Judges" of whom twelve are technical examiners or judges and four are jurists without special technical training. Together these persons constitute two "Main Examining Divisions" ("Anmelde Abteilungs-Divisionen"). No examination of an application as to novelty is made, however, prior to its publication and only then when the granting of the patent is opposed, and only with regard to the supposedly anticipatory patents, literature or cases of prior use cited by the opposer.

Each application is assigned according to the official class to which it belongs, by the Assistant Commissioner to an examiner expert in such class, who conducts the correspondence and finally reports to a board ("Anmelde Abteilung") consisting of three judges: two technical examiners, and one jurist. These decide whether or no the formalities required by law have been complied with and if the application is ready for publication. Upon a favorable decision the application is published ("ausgelegt" or "aufgeboten"), and exposed to public examination for a period of two months. In case of an unfavorable decision, appeal lies to a board of five judges.



known as the judicial board ("Richterliche Instanz"), composed of members different from those sitting in the Anmelde Abteilung, and now comprising three jurists and two technical examiners. (Note: the constitution of this board will probably be changed by the new law to three technical members, and two jurists), whose decision is final.

As stated above, if the Anmelde Abteilung, or in case of an appeal, the judicial board, considers the application to be in due order and finds that a patent may be granted, it orders the application to be published and thus allows opposition proceedings, if any, to be instituted.

On request of the applicant, however, the publication may be postponed for a period not exceeding six months from the date of the decision to publish; a request for a delay of not exceeding three months, must be granted by the office. From the day of publication, the specification, drawings, samples, or models are open to public inspection.

Within two months of the day of publication, opposition may be entered against the granting of the patent requested. The opposition papers must be filed in the Patent Office in duplicate and contain all the reasons assigned, but based only on the following propositions:

1. That the invention is not patentable in the meaning of the law as above defined.
2. That the description does not fulfill the requirements pointed out above as to the specification, and 3, that the invention does not lawfully belong to the applicant.

In the cases falling under heads 1 and 2, opposition may be entered by any person, but in case of 3 only by the party injured or by his successor.

The opponent is not bound at present to pay applicant's costs, but this will probably be changed by law, so as to force the opposer to pay if his objections are found to be untenable.

The application fee for a patent or patent of addition (improvement), is 20 crowns (about \$4), and the fee for a permissible alteration of the specification is 10 crowns, or \$2. During the possible life of a patent (fifteen years), taxes or annuities increasing in amount from 40 crowns for the first year to 500 crowns for the fifteenth year have



to be paid, according to the desired duration of the protection. On a patent running for the full term 2820 crowns, or about \$564, must be paid. The annuities are due yearly in advance, and may be paid yearly or for several years or for the whole term at once. If the first year's tax is not paid within sixty-one days of the day of publication, the application is considered as being withdrawn. Additional fees are required for delayed payments. Inventors who furnish certificates of poverty are granted respites for certain fees or taxes. Besides the above taxes and fees, a fee of 20 crowns is required in the following cases:

1. On filing an appeal (refunded if successful).
2. On bringing an action for revocation or annulment of a patent.
3. On filing a request that the office determine the scope of an existing patent, and,
4. On registering an assignment of a patent. Special stamps must be affixed to most papers filed, but are not exacted in the case of opposition papers, so as to stimulate such action, for the office does not examine an application on its merits before opposition is brought.

Suits for annulment on the ground that the patent is invalid or for revocation (i. e., "Nichtigkeitserklärung," or "Entziehung eines Patentes"), on the ground of non-working for three years, begin in the office before the judicial board ("Richterliche Instanz"). Suits for revocation are very uncommon, however, only two cases having been decided in nineteen years. Appeal lies in both instances to the "Patent Senat," consisting of a juristically trained presiding officer (Präsident) appointed outside of the office, together with three noted University professors or leading experts, and three supreme court judges.

Infringement suits ("Patent Verletzungen") are brought in a "Strafgericht" (Criminal Court), and are appealable to a "Landesgericht" (Circuit Court), and from thence to the "Reichsgericht" (Supreme Court).

A very interesting procedure is that by which a manufacturer or other person, who fears that he may be infringing a patent, may file a petition, or request, accompanied by a fee of 20 crowns, with the Patent Office, asking that the latter determine the scope of the patent that



he may be infringing, so, as to avoid annoyance by infringement suits.

The office then looks into the question but determines only the negative position.

If the office holds that the petitioning manufacturer or other person does not infringe the patent named, the owner of the latter is barred from bringing suit against him for infringement of such patent.

Under the proposed new law, re articles made by a patented chemical process, if the article is apparently infringed, the burden of proof rests upon the apparent infringer to prove that his article was made by a different chemical process.

About 6,000 patents are granted in Hungary yearly, printed in the Hungarian language, the total number issued to date being about 65,000. Our office receives one copy of these patents, which are bound in volumes of 100 each, and are kept in our library.

September 24, 1914.











